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DISTRICT OF OREGON

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Attorneys for Tort Claimants Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Debtor.

Case No. 04-37154-elp11

TORT CLAIMANTS COMMITTEE,

Plaintiff,

Adv. Proc. No. 04-03292-elp

v.

ROMAN CATHOLIC ARCHBISHOP  
OF PORTLAND IN OREGON, AND  
SUCCESSORS, A CORPORATION  
SOLE, dba the ARCHDIOCESE OF  
PORTLAND IN OREGON,

Defendant.

**MEMORANDUM IN SUPPORT OF  
TORT CLAIMANTS COMMITTEE'S  
MOTION TO COMPEL  
PRODUCTION FROM KPMG LLP**

\* \* \*

1 The Tort Claimants Committee (the "Committee") requests the production of  
2 documents from KPMG LLP ("KPMG") which it has already compiled and identified as  
3 KPMG 0001 - KPMG 01074 but not produced because of Debtor's lack of consent. The  
4 Committee's request was a third-party request directly to KPMG and does not require  
5 Debtor's consent. The documents should be produced without further delay.

6 **A. BACKGROUND**

7 On May 10, 2005 the Committee issued a Subpoena *Duces Tecum* to the  
8 Records Custodian of KPMG LLP ("Subpoena"). A copy of the Subpoena is attached to the  
9 Affidavit of Timothy J. Conway as Exhibit 1. The Subpoena was duly served on May 11,  
10 2005 and requested the production of documents and testimony on May 30, 2005. Pursuant  
11 to consultation between counsel for the Committee and counsel for KPMG, it was agreed that  
12 testimony would not be necessary if documents were timely produced. Subsequently,  
13 Committee's counsel gave KPMG more than one extension of time to compile and produce  
14 the requested documents. By June 22, 2005, KPMG had compiled the documents and  
15 identified them as KPMG 00001 - KPMG 01074. However, KPMG only provided the  
16 documents to Debtor's counsel. They should have been provide to the Committee as required  
17 by the Subpoena.

18 Prior to sending the documents on June 22, 2005, KPMG informed  
19 Committee's counsel that they wanted to provide the documents to Debtor for its review prior  
20 to production to the Committee. The Committee's counsel voiced concerns over further  
21 lengthy delays if left to Debtor's discretion. Committee's counsel requested that the  
22 documents be produced immediately or at most the Debtor be given a short time period  
23 within which to review the documents. KPMG's counsel complied and in his letter to  
24 Debtor's counsel stated that he was to be notified "immediately" if the Debtor wanted to  
25 assert any objections or privileges. It has now been more than two weeks since the  
26 documents were produced to Debtor. Debtor has not asserted any objections or privileges

1 and now indicates that it will respond no sooner than July 15, 2005.

2 **B. KPMG'S DUTY TO PRODUCE IS TO THE COMMITTEE**

3 The Subpoena was a request by the Committee to KPMG which is a third-  
 4 party not involved in this litigation.<sup>1</sup> KPMG's responsibility under the Subpoena is to  
 5 produce documents to the Committee, not Debtor. The Committee had been working  
 6 cooperatively with KPMG with respect to the timing of the production of the documents.  
 7 However, the documents have been requested since May 10, 2005 and have been available  
 8 for production since June 22, 2005, but not yet produced to the Committee. The documents  
 9 should be immediately produced to the Committee.

10 Debtor should not be permitted to interfere with the Committee's legitimate  
 11 third-party discovery requests. The Committee is unaware of any objection or privilege that  
 12 could be reasonably asserted by Debtor with respect to these documents. Debtor's counsel  
 13 was even unable to identify any objection or privilege that would be applicable. Debtor has  
 14 had since the May 10, 2005 issuance of the Subpoena to file any appropriate objections.  
 15 Debtor failed to file any objections by the original May 30, 2005 production date and still has  
 16 not filed any objection. Debtor's silence does not constitute an objection justifying the  
 17 withholding third-party documents.

18 \* \* \*

19 \* \* \*

20 \* \* \*

21 \* \* \*

22 \* \* \*

23 \* \* \*


24  
 25 <sup>1</sup> Since the Committee has had difficulty obtaining timely discovery from Debtor, it has  
 26 chosen to use limited third-party discovery in an attempt to obtain relevant information  
 without burden to Debtor.

1 The Committee requests that this Court enter an order compelling KPMG to  
2 immediately produce to the Committee the documents KPMG has already identified as  
3 KPMG 00001 - KPMG 01074.

4 Respectfully submitted this 7th day of July, 2005.

5 TONKON TORP<sup>LLP</sup>

6 By

  
ALBERT N. KENNEDY, OSB No. 82142  
TIMOTHY J. CONWAY, OSB No. 85175  
Attorneys for Tort Claimants Committee

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **MEMORANDUM IN SUPPORT OF TORT CLAIMANTS COMMITTEE'S MOTION TO COMPEL PRODUCTION FROM KPMG LLP** on:

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6 Mr. David L. Johnson  
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10 **REQUESTS FOR NOTICE:**

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12 Jeanette L. Thomas  
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Portland, OR 97204  
19 Attorneys for Oregon Insurance Guaranty Association

20 ☒ mailing a copy thereof in a sealed, first-class postage prepaid envelope,  
addressed to each party's last-known address and depositing in the U.S. mail at Portland,  
21 Oregon on the date set forth below;

22 ☐ causing a copy thereof to be hand-delivered to each party at each party's  
last-known address on the date set forth below;

23 ☐ sending a copy thereof via overnight courier in a sealed, prepaid envelope,  
24 addressed to each party's last-known address on the date set forth below;

25 ☐ faxing a copy thereof to each party at such party's last-known facsimile  
number on the date set forth below; or  
26

1 ☐ e-mailing a copy thereof to each party at such party's last-known e-mail  
2 address on the date set forth below.

3 DATED this 7th day of July, 2005.

4 TONKON TORP LLP

5 By 

6 ALBERT N. KENNEDY, OSB No. 82142  
7 TIMOTHY J. CONWAY, OSB No. 85175  
8 Attorneys for Tort Claimants Committee

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